United Nations E/C.12/63/D/7/2015

Economic and Social Council

Distr.: General
19 April 2018
English
Original: Spanish

Committee on Economic, Social and Cultural Rights

Views adopted by the Committee at its sixty-third session (12–29 March 2018), concerning communication No. 7/2015

Submitted by:	Jaime Efraín Arellano Medina (represented by counsel, Pablo Albán Alencastro)
Alleged victim:	The author
State party:	Ecuador
Date of communication:	24 April 2015
Date of adoption of Views:	26 March 2018
Subject matter:	Denial of severance payment under a collective labour agreement; reduction of special pension measures
Procedural issues:	Exhaustion of domestic remedies; submission of communication within the year following the exhaustion of domestic remedies; jurisdiction *ratione temporis* of the Committee; insufficient substantiation of allegations
Substantive issues:	Right to work; occupational health and safety conditions; right to health
Articles of the Covenant:	2, 6, 7 and 12
Articles of the Optional Protocol:	3 (1) and (2) (a) (b) and (e)

GE.18-06244 (E) 300418 030518

1806244

Please recycle

1.1 The author of the communication is Jaime Efraín Arellano Medina, a national of Ecuador. At the time that the communication was submitted to the Committee, he was 75 years old. The author claims that the State party has violated his rights under articles 6, 7 and 12, read in conjunction with article 2, of the International Covenant on Economic, Social and Cultural Rights. The Optional Protocol entered into force for the State party on 5 May 2013. The author is represented by counsel.

1.2 In the present Views, the Committee first provides a summary of the information and allegations as presented by the parties, without reflecting the opinions of the Committee. This is followed by an examination of the communication's admissibility.

A. Summary of the information and allegations as presented by the parties

The facts as submitted by the author

2.1 The author, a chemical engineer, began working with Corporación Estatal Petrolera Ecuatoriana on 1 October 1975 in the Province of Esmeraldas. The firm subsequently changed its name to Empresa Estatal de Petróleos del Ecuador (Petroecuador).[1] He worked as an administrative clerk, category II-C, at Petroindustrial, a subsidiary of Petroecuador, for over 30 years.

2.2 On 24 October 2007, the author tendered his statutory notice of resignation (*desahucio*) to the Esmeraldas labour inspection office, in which he indicated his intent to terminate his employment contract under the terms of article 184 of the Labour Code. The author submits that he resigned because the firm was not ensuring minimum conditions of cleanliness and appropriate arrangements for the handling of hazardous chemicals.

2.3 The author submits that, once his notice had been tendered, the employer was to have paid the amount owed as severance payment in accordance with clauses 13 and 14 of the sixth collective labour agreement, signed by Petroindustrial and the CRTRAPIN workers committee on 28 November 2001.

2.4 Petroindustrial paid the author, as its final settlement, the amount of US$ 28,589.12, which corresponded to the statutory severance payment provided for in article 185 of the Labour Code. The author maintains that the firm never paid him the full amount of compensation he was entitled to under clause 14 of the sixth collective labour agreement.

2.5 The author filed a complaint with the First Labour Tribunal of Esmeraldas (Tribunal No. 1) seeking, inter alia, payment of the full compensation he was entitled to, in the total amount of US$ 331,576.54, under clause 14 of the sixth collective labour agreement.

2.6 On 26 November 2008, Tribunal No. 1 found that the author's filing was partly substantiated insofar as the final settlement documentation had not specified any amount for the payment owed in connection with voluntary separation; it ruled that the author was entitled to the compensation provided for in clause 14 of the collective labour agreement and ordered Petroindustrial to pay the author the amount of US$ 262,291.

2.7 The parties appealed the decision of Tribunal No. 1 before the Esmeraldas Provincial Court of Justice. On 8 May 2009, the Provincial Court upheld the lower court's decision and ordered that the author be paid US$ 262,291.

2.8 Subsequently, the Office of the Prosecutor General lodged an appeal in cassation against the Provincial Court's decision with the National Court of Justice, maintaining that the Provincial Court had erred in its calculations and that the amount to be paid to the author should have been US$ 255,091.18.

2.9 On 30 May 2011, the National Court of Justice quashed the Provincial Court's decision and dismissed the author's initial claim. The National Court of Justice held that the employment relationship between the parties had ended upon the author's tendering of his notice of resignation. In this connection, the National Court of Justice affirmed that

[1] Pursuant to a presidential decree of 6 April 2010, Petroecuador was renamed Empresa Pública de Hidrocarburos del Ecuador.

termination through the *desahucio* procedure and voluntary separation were two different legal concepts. The former was the notification whereby one party informed the other of its intent to terminate an employment contract, without there being any need to cite any reason or justification; in addition, it entailed an administrative step consisting of the processing of a severance payment in accordance with the limits and prohibitions established by law. Voluntary separation, on the other hand, as defined under clause 14 of the collective labour agreement, was a contractually agreed procedure for terminating an employment relationship without the need for involvement by the labour inspection office; it was a voluntary action that could be exercised by an employee whereby he or she was to receive an amount to be calculated according to the formula stipulated in that clause. The National Court of Justice found that the author had opted to terminate his employment relationship with the firm by means of the *desahucio* procedure and had received the compensation legally due to him. Neither the law nor the collective agreement provided for the aggregation of compensatory payments occasioned by any one cause or reason for voluntary separation, as these were two different juridical facts. Consequently, the judge could not arbitrarily set aside the form of termination of the employment relationship and acknowledge a right that did not flow from the circumstances of the case.

2.10 On 14 June 2011, the author filed a special appeal for protection against the cassation ruling of 30 May 2011 with the Constitutional Court and asked that the cassation ruling of the National Court of Justice be quashed and that the Provincial Court's decision be enforced. The author claimed that the decision of the National Court of Justice was not reasoned and violated his right to effective legal protection inasmuch as it did not consider "the existence of a collective agreement, its applicability and its precedence over the employment contract. The absence of a statement of reasons and the lack of depth in the analysis of collective labour law as a social right and the constitutional precedence of a collective agreement over any contravening provisions place this Chamber in a situation of breach of the Constitution by virtue of having overruled a decision handed down in strict application of the law."

2.11 On 9 April 2014, the Constitutional Court held that there had been no violation of constitutional rights inasmuch as the ruling of the National Court of Justice was duly reasoned, it had examined the principal issues in dispute during the proceedings and the right to due process had not been violated.

2.12 The author submits that his communication meets the requirements of admissibility under the Optional Protocol.

The complaint

3.1 The author submits that the State party violated his rights under articles 6, 7 and 12, read in conjunction with article 2, of the Covenant.

3.2 With regard to the violation of his rights under articles 6 and 7, the author maintains that, after tendering his notice of resignation to the Esmeraldas provincial labour inspection office on 24 October 2007, he was entitled to receive a special additional payment (compensation) under the collective labour agreement inasmuch as he was separating voluntarily from Petroindustrial, and article 185 of the Labour Code established that a severance payment under the *desahucio* procedure did not extinguish a worker's right to compensation under other applicable provisions. In the author's case, however, the employer, when making the final settlement, took into account only the amount payable for severance under the *desahucio* procedure, without including payment of the special additional compensation. The legal remedies pursued subsequently by the author did not redress the violation of which he was a victim: he was denied the compensation provided for in clause 14 of the collective labour agreement in respect of his employment relationship of over 30 years with Petroindustrial. The author submits that other workers in a similar situation who had availed themselves of the *desahucio* procedure did receive the compensation for voluntary separation, whether by means of a payment directly from the employer or by court order.

3.3 The author claims that his right to safe and healthy working conditions and his right to health were violated because, during the years he worked at Petroecuador, the firm did

not maintain minimum conditions of cleanliness and did not establish arrangements for the handling of hazardous chemicals. As a result of that situation, the author began to experience tremors in his hands when he was 67, and he was diagnosed with Parkinson's disease and hearing loss in 2013.

State party's observations on the admissibility and on the merits of the communication

4.1 On 5 May and 6 September 2016, the State party submitted its observations on the communication's admissibility and merits, respectively. It maintained that the communication did not meet the requirements for admissibility under the Optional Protocol and that, in the event that the Committee were to find the communication to be admissible, the communication did not disclose any violation of the author's rights under the Covenant.

4.2 The State party submits that the material facts on which the communication is based occurred prior to 5 May 2013, which is the date on which the Optional Protocol entered into force for Ecuador; accordingly, the Committee lacks jurisdiction *ratione temporis* to consider the communication pursuant to article 3 (2) (b) of the Optional Protocol. The communication relates specifically to events that took place in October 2007, which is when the author tendered his notice of resignation and his employer made payment, as final settlement, only of the amount corresponding to compensation under the *desahucio* procedure as provided for in article 185 of the Labour Code. Any subsequent court rulings or decisions may not be taken into account for purposes of establishing the Committee's jurisdiction *ratione temporis*. Even if the Committee were to be competent to examine this case, however, the relevant decision is the one handed down by the National Court of Justice on 30 May 2011, which is the one that concluded the legal proceedings with regard to the labour-related matters. The State party points out in this connection that the author challenged the final settlement payment in the courts and that this process ended with the 30 May 2011 cassation ruling of the National Court of Justice. The author subsequently filed a special appeal for protection with the Constitutional Court, at which time he alleged that his right to due process had been violated by the absence of a statement of reasons, as had his right to effective legal protection. In presenting this appeal, his purpose was not to seek redress for a violation of his right to work or right to health; rather, the appeal focused on the guarantees of due process in the cassation ruling.

4.3 The State party submits that the special protection appeal procedure is intended to safeguard constitutional rights and due process in decisions, final rulings and decrees having the force of decisions in which there has been a violation — by act or by omission — of rights recognized in the Constitution; that the Constitutional Court has found that the special protection procedure is not intended to be used as a further instance in legal proceedings; and that, inasmuch as its scope and specificity are exclusively constitutional in nature, it is not possible to invoke this form of judicial guarantee to review strictly legal matters that have already been ruled on by the ordinary justice system.

4.4 Concerning the admissibility requirement set out in article 3 (2) (a) of the Optional Protocol, the State party submits that the communication was not presented within one year after the exhaustion of domestic remedies, inasmuch as the relevant ruling for purposes of determining the communication's admissibility is the 30 May 2011 cassation ruling of the National Court of Justice, which is what concluded the labour-related case in which the author challenged the final settlement. While the author did indeed subsequently petition for special protection before the Constitutional Court, that petition being rejected on 9 April 2014 and notified to the author on 24 April 2014, that action did not seek to remedy a violation of the right to work or the right to health but rather related to due process guarantees (see paras. 4.2 and 4.3). Therefore, the author's submission of his communication to the Committee on 24 April 2015 occurred 3 years and 11 months after the domestic remedies had been exhausted.

4.5 The author did not pursue any of the domestic legal remedies available to him with respect to the events that purportedly led to a violation of his right to health, specifically, the working conditions under which he was employed and which he claims caused his physical disability. That portion of the communication is therefore inadmissible pursuant to article 3 (1) of the Optional Protocol, as domestic remedies were not exhausted. Article 102

of the Social Security Act stipulates that the General Health Insurance Administration shall cover beneficiaries against the risk of disease or illness and that the prevention of occupational accidents and illnesses is the responsibility of the Workplace Hazard Insurance Administration. The internal regulations of the Workplace Hazard Insurance Administration provide that, when there is evidence of an occupational illness, the employer or the employee is to report that fact to the Workplace Hazard Insurance Administration. Therefore, if the author believed that he had contracted an occupational illness owing to conditions to which he was exposed while performing his work, he should have reported that to the social security system so that the appropriate steps could be taken to refer him to the Workplace Hazard Insurance Administration, where a medical evaluation would have been undertaken. Once the appropriate medical and technical reports had been prepared, a decision would have been made as to whether it was a case of occupational illness and, if so, certain measures would have been recommended, such as his removal from that work setting and the avoidance of contact with hazardous substances that could be affecting his health, as well as the provision of appropriate financial or other types of assistance.

4.6 The communication does not meet the admissibility requirement provided for in article 3 (2) (e) of the Optional Protocol, as it is manifestly ill-founded and does not disclose a violation of Covenant rights. The information presented in the communication does not show that the judicial authorities that rejected the author's claims were taking deliberate action to violate his rights. The judges in the cassation ruling reviewed the legal aspects relating to the form of termination of the employment relationship and to the payment of compensation under a collective labour agreement, finding that the author was not entitled to such compensation. In the communication, the author confines himself to expressing dissatisfaction with the National Court of Justice's rejection of his claim, without substantiating the alleged violations of Covenant rights, in an effort to have the Committee overrule that court's decision. The Committee, however, may not act as a court of fourth instance. Furthermore, the author's complaint concerning payment of the compensation provided for in the collective labour agreement was reviewed by three separate courts and was supported at both first and second instance. The legal proceedings in the present case observed due process and were consistent with the Constitution and all applicable legislation.

4.7 Should the communication be found admissible by the Committee, the State party maintains that it does not disclose any violation of the author's rights under the Covenant. As to the author's allegation of a violation of article 6 of the Covenant, the State party notes that at no point does the communication present arguments that would indicate a violation of the right to work; that right was acknowledged at all times and was freely exercised by the author before, after and during the entire time he worked at Petroecuador.

4.8 The communication puts forward no information or arguments indicating that there has been a violation of article 7 of the Covenant. The State party makes reference to the occupational health and safety measures taken by Petroecuador and maintains that it guaranteed the author's right to enjoy just and favourable conditions of work, in particular his right to carry out his tasks in a decent and appropriate setting that protected his health, security and safety. Concerning the author's claim that this right was violated by Petroecuador when it did not pay him the compensation for voluntary separation provided for in the collective labour agreement, the State party points out that, according to the rulings of the National Court of Justice, the author had availed himself of the *desahucio* procedure to terminate the employment relationship and was therefore not entitled to any additional compensation that would be applicable in instances of voluntary separation, a procedure which he had not utilized.

4.9 As to the author's claims regarding article 12 of the Covenant, the State party submits that it always guaranteed, through Petroecuador,[2] adequate workplace health and safety conditions and, by extension, the author's right to enjoy the highest attainable standard of physical and mental health. In this connection, it notes that, during the author's

[2] The State party attached numerous documents, including some on the safety, health and environmental procedures of Petroecuador.

employment at Petroecuador, he underwent numerous medical evaluations between 1977 and 2005, as did all other employees.

4.10 Concerning the author's claim relating to exposure to hazardous substances, the State party submits that the author, during his time of employment at Petroecuador, and in particular at the Esmeraldas refinery, performed tasks that were mainly administrative in nature and were primarily in the areas of human resources and staff training. The author himself states that he began to display symptoms of Parkinson's disease when he was 74, in other words, seven years after leaving Petroecuador. It is not possible to tie the onset of this disease to the tasks he performed, as the latter were administrative in nature and he was not exposed to substances that could have played a role in the onset of the disease.[3] With regard to the author's hearing loss, the State party cites the results of the hearing tests performed on the author; those tests established that he suffered from presbycusis, or age-related hearing loss, which is a neurodegenerative disease that mainly affects persons over 55 and is related to genetic and hereditary factors.

Author's comments on the State party's observations

5.1 In correspondence dated 11 July 2016 and 23 January 2017, the author provided comments on the State party's observations, reiterating his claim that his rights under the Covenant had been violated and maintaining that the communication met all the requirements for admissibility under the Optional Protocol.

5.2 The author states that, under Ecuadorian law, the *desahucio* notification procedure constitutes a unilateral and voluntary decision to terminate an employment relationship on the part of the employee[4] and that, pursuant to clause 14 of the collective agreement, "any employee who voluntarily separates from the firm shall receive a payment". Accordingly, the *desahucio* procedure and voluntary separation are neither mutually exclusive nor do they exclude other possibilities, as each contains as a fundamental element the voluntary and unilateral expression of intent by the employee.[5] The author therefore maintains that he was entitled to receive both the severance payment associated with the *desahucio* procedure under article 184 of the Labour Code and compensation for voluntary separation under the collective agreement. In the event of any doubt regarding the scope of clause 14 of the collective agreement, that clause should be interpreted in favour of the rights of the employee.[6]

5.3 As to the State party's observations that the author had not expressly referred to a violation of his rights to work and to health in the special protection petition submitted to the Constitutional Court, the author states that that appeal essentially sought to secure a ruling that the cassation finding of the National Court of Justice had not been reasoned and that, as a direct consequence thereof, he stood in need of protection of his right to work. As due process is directly linked to protection of the rights to work and to health, there was no need to make express mention of the violation of the rights to health and to work in the petition for special protection. Moreover, under the Constitution and under article 4 of the Basic Act on Legal Guarantees and Constitutional Review, judges hearing cases that involve constitutional matters are obliged to rule on violations of constitutional rights regardless of whether such violations are expressly claimed. In that regard, the special protection procedure was the last remedy available to the author and was exhausted. In accordance with the principle of the interdependence of rights, it should be understood that he thereby also exhausted all domestic remedies in relation to his claim that there had been a violation of his right to health. He maintains that the right to health is closely linked to the

[3] The State party provided a report dated 28 April 2016 which was signed by the General Manager of Petroecuador.

[4] The author makes reference to article 184 of the Labour Code.

[5] The author makes reference to Constitutional Court decision No. 040-114-SEP-CC, in which the Court found that "the compensation for voluntary separation is not a penalty, because the main element is the worker's desire to stop working and the employer's desire to offer a financial benefit to workers who voluntarily separate in order to receive the agreed compensation".

[6] Article 326 of the Constitution: In case of doubt as to the scope of legal, regulatory or contractual provisions related to labour matters, such provisions shall be applied in the way most favourable to employees.

exercise of other human rights and is dependent on those rights, one of which is the right to work,[7] and that a component of the right to work is the guarantee of adequate conditions so that persons may work in a safe setting.

5.4 The Committee is competent *ratione temporis* to examine the present communication inasmuch as the last act contributing to the violation of the author's rights to work and to health was the Constitutional Court's ruling of 9 April 2014, which was after the Optional Protocol had entered into force for the State party.

5.5 As to his claims relating to article 6 of the Covenant, the author submits that the obligations that emanate from the right to work are not fulfilled by States parties that simply take a passive approach to access to work; rather, those obligations include the provision of a series of guarantees once a person has entered into an employment relationship. Thus, for instance, article 7 of the Covenant establishes the right of all persons to just and favourable conditions of work, including, in particular, safe working conditions.

5.6 In the instant case, the author was covered by a collective labour agreement and, accordingly, his employment rights were set out in the Labour Code and in the collective agreement. The right to compensation for voluntary separation was expressly covered in that agreement and forms part of the labour rights of the author. Denial of this right by the State party is therefore a breach of the obligation to ensure access to the right to work as established in article 6 of the Covenant.[8] Insofar as the rights set out in the collective agreement were directly related to the right to work, it is to be understood that the State party did not fulfil its obligation to protect and enforce the rights emanating from the Covenant. The author adds that article 8 of the Labour Code lists the elements that constitute an employment relationship; they include remuneration, which is moreover a right of workers. The concept of remuneration cannot be construed so narrowly as to include wages alone; it also encompasses the right of workers to indemnification and compensation.

5.7 The author repeats his claims of violations of article 12 of the Covenant. The right to health cannot be interpreted to mean solely a person's right to be healthy; rather, States parties have a positive obligation to ensure healthy workplace conditions under article 12 of the Covenant.[9] In the case at hand, the State party — through Petroecuador — failed to fulfil its obligations to ensure the author's right to enjoy the highest attainable standard of health. The author maintains his claim that, as a consequence of the unsafe and inadequate working conditions at Petroecuador, he now has Parkinson's disease and a hearing loss.[10] The author adds that the State party has not provided effective assistance in the treatment of his disease, since the Ecuadorian Social Security Institute lacked the drugs necessary for his treatment and he was therefore obliged to turn to private providers.

Additional information provided by the parties

State party

6.1 On 3 March 2017, the State party submitted further observations. It repeated its previous observations on the communication's admissibility and merits and noted that the author's comments contained no new information that would disclose any violation of his rights under the Covenant.

6.2 The petition for special protection that the author filed with the Constitutional Court was not intended to address a violation of his right as a worker to receive indemnity or compensation per se or a violation of his right to health caused by his working conditions. Rather, it alleged a violation of due process guarantees in connection with the cassation

[7] The author makes reference to general comment No. 14 (2000) on the right to the highest attainable standard of health.

[8] The author makes reference to general comment No. 18 (2006) on the right to work.

[9] The author makes reference to general comment No. 14.

[10] According to a medical certificate issued on 12 November 2013, the author was diagnosed with Parkinson's disease at a disability level of 65 per cent and with bilateral hearing loss at a disability level of 70 per cent on 29 November 2007.

ruling. The author had resorted to the ordinary justice system to seek redress for an alleged violation of his right as a worker to receive compensation under a collective labour agreement. He did so by initiating proceedings in the labour courts, which were the sole appropriate mechanism for that purpose; the end result of that process was a cassation ruling that was not in his favour. In no way was the petition for special protection intended to be an additional remedy or to provide a court of fourth instance to rule on the claimed labour violations, since that is not the legal nature or purpose of that procedure.

6.3 The State party asserts that cassation is a special legal remedy whereby an appellant asks that a court decision be declared without effect because it suffers from a serious flaw in the application or interpretation of a legal norm; that article 2 of the Cassation Act, in force at the time of the events, established that this remedy could be invoked against "decisions and opinions that provide definitive rulings or that are handed down by the higher courts [now known as provincial courts] or by district tax and administrative courts"; and that the possibility of availing oneself of this remedy in labour litigation is provided for by article 613 of the Labour Code, in force at the time of the events. It adds that the remedy of cassation is intended to provide a means for correcting the ruling being appealed against and having a different one handed down in its place, thus voiding the entirety of the ruling being appealed against, as if that ruling had never been issued. Cassation is thus the remedy of last resort in labour litigation before a decision acquires the status of res judicata; consequently, the remedy of cassation puts an end to labour-related proceedings.

6.4 The State party repeats its observations on the special protection procedure and its scope (see para. 4.3) and stresses that the Constitutional Court has found that the special protection procedure does not constitute an additional instance; nor may it be considered to be an additional remedy, much less an avenue for reassessing evidence when the decision under appeal emanates from the ordinary justice system.[11]

6.5 As to article 3 (1) of the Optional Protocol, the State party maintains that the author did not exhaust all domestic remedies with regard to his claims about the allegedly unsafe working conditions and his right to health. At the time that the State party's observations were submitted to the Committee, the author had not lodged any sort of administrative or judicial action against his former employer or against the social security system in relation to the claimed violation of his right to health stemming from his allegedly inadequate working conditions; no complaints had been filed with the labour inspection office and no claims for payment of compensation for occupational illness had been submitted.

6.6 The State party reaffirms that, in Ecuadorian jurisprudence, the *desahucio* procedure and voluntary separation are two separate and distinct legal concepts. In the author's case, the National Court of Justice had found that there was a clear distinction between the *desahucio* procedure and voluntary separation: *desahucio* was a legal procedure that consisted of "giving notice" of the termination of an employment contract, while voluntary separation took the form of a contractual financial "benefit" that workers could avail themselves of in order to receive the compensation established for this purpose. The procedures involved also reside in two separate spheres: one is administrative and is handled by the labour inspection office; the other is contractual and is handled directly by the employee and the employer. No one is entitled to benefit twice from one and the same action or to lay claim to a double right that exists neither in the law nor in collective bargaining. In similar proceedings, the National Court of Justice had applied the same principle, creating a binding legal precedent. In this connection, the State party maintains that it falls solely to its judicial authorities to interpret and determine the scope of such legal principles at the time they are seized of a matter for decision.

Author

7. In correspondence dated 28 April 2017, the author reaffirmed that the communication met all the requirements of admissibility set out in the Optional Protocol.

[11] Constitutional Court decisions Nos. 0048-08-EP and 022-10-SEP.

B. Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide whether the case is admissible under the Optional Protocol.

8.2 The Committee takes note of the State party's argument that the Committee is not competent *ratione temporis* to examine the present communication inasmuch as the events that gave rise to the alleged violations occurred in October 2007, which is prior to the date on which the Optional Protocol entered into force for Ecuador, i.e., 5 May 2013, and that court decisions handed down subsequent to that date may not be taken into account for purposes of establishing the jurisdiction *ratione temporis* of the Committee.

8.3 The Committee recalls that, pursuant to article 3 (2) (b) of the Optional Protocol, it must declare a communication inadmissible whenever the communication relates to facts that occurred prior to the entry into force of the Optional Protocol for the State party in question, "unless those facts continued after that date"; it further recalls its case law whereby the judicial and administrative decisions of national authorities are also considered part of "the facts", within the meaning of article 3 (2) (b) of the Optional Protocol, when they are rulings on cases directly related to the initial events, acts or omissions that gave rise to the violation and provided that they afford redress for the alleged violation under the laws in force at the time. If such proceedings occur after the Optional Protocol has entered into force for the State party in question, the requirement set out in article 3 (2) (b) is not an impediment to declaring a communication admissible.[12] Accordingly, the Committee must determine if the Constitutional Court's decision of 9 April 2014, which disallowed the author's petition for special protection, meets those criteria.

8.4 The State party maintains that the relevant decision for determining the Committee's jurisdiction is the one handed down by the National Court of Justice on 30 May 2011, which terminated the legal proceedings on the labour-related matter; that the Constitutional Court's decision of 9 April 2014 should not be taken into account inasmuch as the special protection procedure does not constitute an additional instance or a review of ordinary labour law; and that the author's petition did not seek to address a violation of his right to work, to entitle him to receive labour-related indemnities or compensation or to claim a violation of his right to health because of his working conditions.

8.5 Notwithstanding the fact that the only issues cited in the author's petition for special protection were alleged violations of the right to due process and the right to effective legal protection, the Committee notes that the petition sought to have the cassation decision of the National Court of Justice found to be unsubstantiated because it did not identify the reasoning used by the Court in finding that the author was not entitled to the compensation stipulated in the collective agreement; and that, in addition, the National Court of Justice is the sole judicial instance that disallowed the author's labour-related claim. In the specific circumstances of the present case, the procedure provided an opportunity for the Constitutional Court to remedy the alleged violations of the author's fundamental rights in respect of the present communication.[13] The Committee therefore is of the view that the communication meets the requirements of admissibility set out in article 3 (2) (b) of the Optional Protocol.

8.6 The Committee takes note of the State party's observations that the communication, which was submitted to the Committee on 24 April 2015, is inadmissible under article 3 (2) (a) of the Optional Protocol because it was not submitted within the year following the exhaustion of domestic remedies. The State party maintains that the relevant decision for purposes of determining the admissibility of the communication is the one handed down by

[12] Communication No. 14/2016, para. 9.8.

[13] The Committee notes that, under article 94 of the Constitution of the State party, the special protection procedure may be used "against decisions or definitive rulings in which there has been a violation — by act or by omission — of rights recognized in the Constitution" and that, under article 63 of the Basic Act on Legal Guarantees and Constitutional Review, "the Constitutional Court shall determine whether in the decision there has been a violation of the constitutional rights of the complainant and, if a violation is found, shall order full redress for the person concerned".

the National Court of Justice on 30 May 2011, which terminated the proceedings in respect of the labour-related matter.

8.7 The Committee is of the view that, for the purposes of article 3 (2) (a) of the Optional Protocol, "domestic remedies" are all remedies available within the domestic legal order, both ordinary and extraordinary, as may be pursued by the alleged victim or his or her representatives in direct relation with the events that initially gave rise to the claimed violation and that, prima facie, may be reasonably considered as effective for remedying the claimed violations of the Covenant. In the light of the considerations outlined above (see para. 8.5), the Committee is of the view that, in the instant case, the available domestic remedies were exhausted with the Constitutional Court decision of 9 April 2014, which was notified to the author on 24 April 2014. The Committee therefore finds that the present communication was submitted within the time frame established in article 3 (2) (a) of the Optional Protocol.

8.8 As concerns the admissibility requirement established in article 3 (1) of the Optional Protocol, the Committee takes note of the State party's argument that the author has not availed himself of any of the available domestic remedies with regard to the events that allegedly compromised his health as a consequence of his working conditions at Petroecuador; that, according to the internal regulations of the Workplace Hazard Insurance Administration, the author should have reported his occupational illness to the social security system; and that, furthermore, he could have initiated administrative or legal action against his former employer or against the social security system by lodging a complaint with the labour inspection office or submitting applications for compensation for occupational illness. The Committee also takes note of the author's claims that, in accordance with the principle of the interdependence of rights, it should be understood that he exhausted the domestic remedies in relation to his claims concerning the right to health, inasmuch as one of the components of the right to work is the guarantee of safe and healthy conditions for employees. The Committee notes, however, that the author has not convincingly substantiated his contention that the domestic remedies mentioned by the State party would not have been effective in remedying the alleged violations. The Committee therefore finds that the author did not exhaust all available domestic remedies and that that portion of the communication is inadmissible under article 3 (1) of the Optional Protocol.

8.9 The Committee takes note of the author's claims that the decision by Petroecuador not to pay him the compensation stipulated in clause 14 of the collective agreement for employees who separate voluntarily from the firm, together with the court decisions that disallowed his appeals, constituted a violation of his rights under articles 6 and 7 of the Covenant. The Committee also takes note of the State party's observations that those claims are manifestly ill-founded, do not disclose a violation of Covenant rights and seek to have the Committee act as a court of fourth instance.

8.10 In the present case, the Committee observes that the author's claims essentially challenge the grounds on which the National Court of Justice reached its decision of 30 May 2011 that the author was not entitled to payment of the compensation stipulated in the collective agreement. In particular, they challenge the distinction made in the State party's legal order between the legal concepts of the *desahucio* procedure and voluntary separation and the impact of that distinction in terms of the compensation to which workers are entitled. In the view of the State party, that criterion is a binding legal precedent (see paras. 2.9 and 6.6). The Committee finds that, in the specific circumstances of this case, the claims as presented by the author are essentially questioning the interpretation of national legislation by the judicial authorities. In this regard, the Committee recalls its jurisprudence, which establishes that its task, when examining a communication, is limited to analysing whether the events described in a communication, including the application of national legislation, disclose a violation by the State party of the economic, social or cultural rights enumerated in the Covenant. The Committee's jurisprudence also establishes that it falls primarily to the courts of States parties to assess the facts and evidence in each individual case, as well as to interpret the applicable laws. The Committee is only called upon to decide whether the assessment of evidence or the interpretation of domestic law applied in the case in question was manifestly arbitrary or equivalent to a denial of justice and would

constitute a violation of a Covenant right.[14] Accordingly, it is primarily the responsibility of the author of the communication to provide the Committee with sufficient information and documentation to demonstrate that one of these situations applies in his case. The Committee has examined the material presented by the author, including the decisions of the National Court of Justice and the Constitutional Court of 30 May 2011 and 9 April 2014, respectively, and finds that those documents do not show that there are any such flaws in the author's case. Consequently, the Committee considers that it does not fall within its purview to interpret the State party's domestic legal order as a means of determining whether the author is entitled to the severance payments provided for under the *desahucio* and voluntary separation procedures. The Committee therefore finds that the author has not sufficiently substantiated his claims with regard to articles 6 and 7 of the Covenant and that they are consequently inadmissible under article 3 (2) (e) of the Optional Protocol.

C. Conclusion

9. Having considered all the information presented to it, the Committee finds that the communication is inadmissible under the Optional Protocol.

10. The Committee therefore decides:

(a) That the allegations concerning the damage to the author's health caused by his working conditions at Petroecuador are inadmissible under article 3 (1) of the Optional Protocol;

(b) That the allegations concerning the denial of a special additional payment (compensation under the sixth collective labour agreement) are inadmissible under article 3 (2) (e) of the Optional Protocol;

(c) That the communication is inadmissible under article 3 (1) and 3 (2) (e) of the Optional Protocol;

(d) That, pursuant to article 9 (1) of the Optional Protocol, the present Views shall be transmitted to the author of the communication and to the State party.

[14] See communications Nos. 1/2013, *López Rodríguez v. Spain*, Views adopted on 4 March 2016, para. 12, and 2/2014, *I.D.G. v. Spain*, Views adopted on 17 June 2015, para. 13.1.